

March 14, 2017

VIA ECFS

Marlene H. Dortch
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation
Broadnet/RTI Declaratory Ruling
CG Docket No. 02-278

Dear Ms. Dortch:

On March 10, 2017, on behalf of Broadnet Teleservices LLC (“Broadnet”), Patrick Halley and the undersigned of Wilkinson Barker Knauer, LLP met with Nick Degani, Senior Counsel, and Zenji Nakazawa, Acting Public Safety and Consumer Protection Advisor, to Chairman Ajit Pai, to discuss the *Broadnet/RTI Declaratory Ruling*,¹ currently subject to a petition for reconsideration.² During the meeting, we explained that citizens’ demand for civic engagement through tools like telephone town hall calls has never been higher. We noted the tremendous impact of the *Broadnet/RTI Declaratory Ruling* on citizens’ ability to engage with their elected representatives, and stressed the importance of ensuring that such calls can continue.

We also reiterated Broadnet’s support to extend the *Broadnet/RTI Declaratory Ruling* to calls made on behalf of state and local governments.³ We explained that the primary case the

¹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 31 FCC Rcd 7394 (2016) (“*Broadnet/RTI Declaratory Ruling*”).

² Petition for Reconsideration of Declaratory Ruling and Request for Stay Pending Reconsideration of the National Consumer Law Center *et al.*, CG Docket No. 02-278 (filed July 26, 2016).

³ In its initial petition for declaratory ruling, Broadnet urged the Commission to declare that the Telephone Consumer Protection Act (“TCPA”) and the TCPA rules do not apply to calls made by or on behalf of federal, state, and local governments when such calls are made for official purposes. See Petition of Broadnet Teleservices LLC for Declaratory Ruling, CG Docket No. 02-278 (filed Sept. 16, 2015) (“Broadnet Petition”). The Commission declined to address state and local calls in the

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Commission relied on in declaring that the federal government is not a “person” for purposes of the TCPA’s general prohibition on autodialed and prerecorded calls to wireless phones also addressed states and state officials.⁴ In the case, the Supreme Court stated, among other things, that “[t]he presumption is ‘particularly applicable where it is claimed that Congress has subjected the **States** to liability to which they had not been subject before.’”⁵ With respect to local governments and local officials, we noted that several courts have indicated that when Congress defines “person” in the manner it did in the Communications Act, such language excludes municipal governments and other local governmental entities.⁶

Finally, we explained the mechanics of the Broadnet platform to demonstrate that in facilitating telephone town hall calls, Broadnet is the service provider and offers the platform, but is not the maker of the calls. We noted, for example, that Broadnet’s government customers, and not Broadnet, decide whether to make a telephone town hall call, the timing of the call, the call recipients, and the content of the call.⁷

Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Joshua M. Bercu/
Joshua M. Bercu

Broadnet/RTI Declaratory Ruling, but stated that the question likely would be addressed in a future order. *Broadnet/RTI Declaratory Ruling* ¶ 7 n. 32.

⁴ See *id.* ¶ 12 n. 61 (citing *Vt. Agency of Nat. Resources v. United States ex rel. Stevens*, 529 U.S. 765, 781 (2000)).

⁵ *Vt. Agency of Nat. Resources*, 529 U.S. at 780-81) (emphasis added) (citing, *inter alia*, *Michigan Dep’t of State Police*, 491 U.S. 58, 64 (1989); *Wilson v. Omaha Indian Tribe*, 442 U.S. 653, 667 (1979); *United States v. Cooper Corp.*, 312 U.S. 600, 604 (1941)); see also Broadnet Petition at 6 (citing the same cases).

⁶ See Broadnet Petition at 5 n. 14.

⁷ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961 ¶¶ 38-40 (2015).